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**THE NEW FORMAT**

# Report on participant satisfaction with mediation services

**ONTARIO HUMAN RIGHTS COMMISSION**

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## Report on Participant Satisfaction with Mediation Services

In May 1997, the Ontario Human Rights Commission introduced mediation into its service delivery model. This new service provides parties with the option of attempting to resolve their complaints at an early stage in the complaint process.

After one year of operating with this new service, the Commission was interested in evaluating participant satisfaction, both in terms of the mediation process and the results. A process of customer surveying was introduced in May 1998, where all parties involved in mediation were invited to rate and provide comments on their experience with mediation.

This report provides a description of the Commission's mediation system design, as well as a comprehensive assessment of participant views of the mediation process for the period of May 1998 – September 1998. Survey results for the period September 1998 – May 31, 1999 will be reported in December 1999. Once all of the survey results are compiled, this information will be combined with statistical information regarding the impact of mediation on the Commission's caseload. Together, they will form a comprehensive evaluation of this new service delivery model within the Ontario Human Rights Commission.

This report on participant satisfaction in the mediation process contains four sections as follows:

- A description of the important features of the Commission's mediation service design to provide a context for the survey results.

- Background information on the mediation caseload during the period of this survey.

- Presentation of participant survey results during the period of May 1998 to September 1998.

- General conclusions and recommendations based on the results of this initial survey period.

The Commission will utilize the survey results from this first review period as a benchmark for future survey results to assess whether there are significant changes in participant satisfaction over time.

Introduction:
mediation at the ontario human rights commission

With the introduction of mediation services, parties are now offered a method of resolving a complaint very early in the Commission's complaint process. This opportunity for settlement is consistent with Section 33(1) of the ***Human Rights Code***, which mandates the Commission to endeavour to effect a settlement in all cases, with the exception of those cases subject to the provisions of Section 34 (discretion to not deal with a complaint in limited circumstances). Mediation can eliminate the need for a full and lengthy investigation of a case, where it is successful.

In developing the mediation service design for the Commission, staff and stakeholders were consulted on the best approach to be adopted, given the organization's mandate as set out in the Ontario ***Human Rights Code***. Consultants with expertise in mediation system design provided assistance and advice during this development phase.

The Commission endeavoured to create a process that would be efficient and timely, and that would also enhance the empowerment of parties in the complaint process. The main considerations in designing a mediation service in the context of human rights legislation included:

- The power imbalance that may exist between complainants and respondents;

- The Commission's public interest mandate (the need to protect and promote broader issues of equality and access as well as prevent further discrimination, where appropriate, through individual human rights complaints);

- The role of the Commission and the staff mediator in the mediation process.

With these considerations in mind, the Commission developed its mediation framework and procedures. The main features of the Commission's mediation service are described in the paragraphs that follow.

To ensure timeliness of service and to minimize the resources expended by parties, the

Commission offers mediation in the early stages of the complaint process. Generally, the Commission recommends that mediation occur within 90 days from the date a complaint is filed.

## Voluntary Process

The Commission's mediation process is voluntary. Parties are invited to participate in mediation during the Commission's intake process. If all parties to a complaint indicate a willingness to participate in mediation, the file is assigned to schedule a mediation meeting. If one or more of the parties indicate an unwillingness to participate in mediation, the file is referred to investigation. The Commission retains the right to declare certain cases as inappropriate for mediation, and when this occurs, it results in a direct referral to investigation. Examples of cases that could be identified as inappropriate for mediation are ones where there are significant public interest issues, or where the development of case law on the particular issue(s) is important to the advancement of human rights in the Province of Ontario.

## Confidentiality

Parties participating in the mediation service are required to sign a mediation agreement that, in part, ensures the confidentiality of the process. Confidentiality is an important feature as it allows parties to feel comfortable in participating in open communication, without fear that the discussion will be used in future proceedings. Parties are informed that any information arising in the course of a mediation meeting is confidential and cannot be used in any future proceeding, including the investigation of the human rights complaint, should the matter not resolve at mediation. To ensure the confidentiality of mediation is protected within the Commission, mediation records are not shared with investigators and do not form part of the Commission's ongoing file.

## Public Interest Mandate

Another important aspect of the Commission's mediation service design relates to the public interest mandate of the organization. The Commission views every complaint of discrimination as raising the public interest. Often the public interest will be served through remedies to the individual. However, in some instances, broader public interest remedies are required in order to rectify and prevent discrimination.

In the Commission's mediation process, the mediator must advise the parties at mediation that the Commission has a public interest mandate. Parties are advised that settlements must be approved by the Commission (either by the manager or the Commissioners), to ensure that the public interest arising in a complaint has been addressed through the mediated settlement. This requirement was built into a standard opening statement for mediators, which explains both the role of the mediator and the role of the Commission in these settlements.

The approval process is central to fulfilling the Commission's public interest mandate. Procedurally, there are two types of settlements. The first is an administrative settlement

where all terms agreed upon by the parties are fully implemented. This means that the Commission has possession of all materials required in a settlement (e.g. cheques, letters, etc.) before the settlement is approved. In this type of settlement, the manager can approve it as there is no risk that the terms of settlement will not be met.

The second type of settlement is a jurisdictional settlement under section 43 of the ***Code***, which requires approval by the Commissioners. In section 43 settlements, there are terms to be implemented in the future, or in other words, terms that have not been fully executed at the time of approval. Jurisdictional or section 43 settlements provide protection to the complainant should the respondent fail to honour the terms of settlement agreed upon. In these circumstances, the complainant could file a breach of settlement complaint pursuant to section 43 of the ***Code***, which will be subject to the same process and procedures of all complaints filed.

In both types of settlements, the manager or the Commissioners respectively, must be satisfied that the public interest has been protected through the terms of settlement agreed upon by the parties.

## Role of Commission Mediators

Mediation officers perform the role of an impartial, neutral third party facilitator of the mediation process. The officers are specially trained staff of the Commission, and they work independent of the investigation service. The mediation officers have years of experience in the human rights process and have received professional training through a recognized mediation program. Their role is to facilitate the discussion between the parties so that a mutually acceptable solution to the conflict can be reached.

The mediators do not provide legal advice. However, if asked by the parties, the mediator can provide information relating to case law, and/or Commission policies. Any information provided must not represent the opinion of the mediator, and must relate to legitimate and established sources of information (e.g. Board of Inquiry decisions).

## Mediation Approach

While mediation approaches have been defined in various forms, current literature focuses on two main approaches that are widely accepted: interest-based, and rights-based. Interest-based mediation focuses on the interests, goals, and needs of the parties rather than the positions of the parties or the perceived outcome of litigation. In interest-based mediation, the mediator works with the parties to determine the issues in dispute, and assists the parties to generate options to resolve the dispute that satisfies the interests of both parties. Rights-based mediation is an approach where the mediator is a neutral third party, who provides the parties with an independent assessment of the likely outcome of a case should it proceed beyond the mediation process.

Due to the Commission's public interest mandate, an interest-based model could not be fully adopted. However, a rights-based model could not be fully adopted either as cases are mediated in the earlier stages of the complaint process, before evidence is gathered. Therefore, based on the circumstances of individual cases, mediators will adopt the most appropriate approach, which often combines principles of both approaches to mediation.

## Power Imbalances

In introducing mediation, there was a concern about probable power imbalances between parties attending mediation. To address this, the meetings are conducted on "neutral ground", in Commission offices or in other government offices across the Province. In addition, power imbalances are addressed by the mediator in making an assessment of the facilitation approach to ensure the "less powerful" party is able to participate equally in the process. The mediators sometimes use a technique known as "shuttle" mediation in these situations. The approach involves the mediation officer working with the parties individually and communicating between them each party's respective interests, options and/or alternatives to settlement. Often the complainant is empowered through having made a complaint and having the senior executives attend mediation to hear his/her story. However, there are other instances, such as cases involving sexual harassment, where face to face mediation does present a clear power imbalance. In instances of this kind, shuttle mediation is often utilized.

## The Mediation Caseload:
## benchmarks from the case management database

### Mediation Case Load Volumes and Mediation Outcomes

This evaluation study relates specifically to the cases that went through the Commission's formal mediation process in the period May 8, 1998 to September 22, 1998. The Commission's case management database indicates that 201 cases were mediated during this four and one half- month interval[1]. The majority of these cases (144 or 72%) resulted in mediated settlements, and the majority of the settlements were fully implemented prior to Commission approval of the terms. In a small number of cases (17) the agreements between the parties contained references to future undertakings, and for these cases, the settlements were approved by the Commissioners under section 43 of the ***Code***.

### Mediation Case Processing Timeframes

Most of the cases in the study were ones that had been filed at the Commission after the May, 1997 introduction of mediation services. A small number (21 cases, or 10.4%) were carry-overs from the previous service delivery model and they were referred to mediation from the Investigation Office with the consent of the parties (referred to as "loop-back" cases). The median age of cases from the date of filing to the mediation meeting was 4.6 months for the period covered by this survey. If the "loop-back" cases are included in the calculation, this median increases to 4.8 months.

## Assessment of Participant Satisfaction with Mediation: the commission's survey of mediation participants (phase i)

To assess participant satisfaction with mediation, the Commission seeks feedback after each mediation meeting. The feedback is obtained by means of structured written questionnaires. Three separate questionnaires were developed to gain the perspectives of different participants in the process. One version was created for complainants, respondents and third parties, a second for lawyers and representatives, and a third for mediators.

Since May, 1998, the Commission mediators have been required to provide participants with the questionnaires at the end of the mediation. In many instances, the surveys are completed before the parties leave the Commission's premises, and at other times, the parties take the surveys home and they are asked to return them in the mail. The parties are told that the completion of the survey is greatly appreciated and that their answers are very important to the Commission in its efforts to monitor and evaluate the impact of the mediation service. Reminder letters are not issued, and identification numbers are not used to link the questionnaires with the specific mediation case.

### The Survey Instruments

The questionnaires are divided into two sections. The first section deals with general information about the case mediated and about the role of the participant in the mediation. Details of the mediation include date, location, format (in person or telephone conference) and use of an interpreter. The nature of the complaint is summarized in this first section by questions pertaining to grounds and social areas. All parties are asked to indicate their previous experience with mediations at the Ontario Human Rights Commission and elsewhere. Lawyers and representatives are asked to indicate whether settlement discussions took place prior to the mediation, and whether settlement was recommended to their clients prior to the mediation session. Lawyers are asked to indicate the number of years they have been practising.

The second part of the questionnaire deals with the parties' perceptions of the mediation session. Participants are asked about their preparedness for the mediation and their satisfaction with the mediation process and its outcome. They are also asked questions about the mediator's effectiveness in facilitating the process. The parties are given an opportunity to indicate ways that the mediation session could have been improved, and are asked to identify factors that may have influenced the settlement outcome. A final question asks parties to provide their opinion as to whether or not the public interest was served through the mediation process.

(Please refer to Appendix for samples of questionnaires.)

### Characteristics of the Sample

Between May 8th and September 22nd, 1998, the Commission conducted 201 mediations. Typical mediation sessions involved between 5 and 7 parties (excluding the mediators). The

Commission received 240 replies from complainants, respondents, third parties and representatives and this translates into a return rate of approximately 20 percent.

The descriptive data captured through the questionnaires indicates that the sample is representative of the Commission's overall caseload composition. The survey returns from complainants, respondents, third parties and representatives reflect the Commission's overall caseload patterns in terms of the location of the alleged discrimination as well as grounds and social areas cited[2].

A) Representation

In 36 percent of responses received, the complainants attended mediation without any form of representation. This compares to 31 percent of respondents. Complainants were represented by lawyers 33 percent of the time, by family members or friends 25 percent of the time, and by union representatives 5 percent of the time. By contrast, respondents were represented most frequently by legal counsel (65%), with representation by family members and friends accounting for 4 percent[3].

Representation

| | Valid % | | | |
|---|---|---|---|---|
| | Lawyers | Family/ Friends | Union Rep. | Self |
| What type of representation did you have? | | | | |
| • Complainants: | 33% | | | 36% |
| • Respondents: | 65% | 25% | 5% | 31% |
| • Total | 51% | 4% | 0% | 35% |
| | | 10% | 4% | |

The data also indicates that lawyers representing respondents had typically been practising for over 5 years, whereas lawyers representing complainants had typically been practising for less than 5 years.

B) Type of Mediation and Use of Interpreters

All of the survey returns involved mediations that were face-to-face meetings between the

mediator and the parties. In some of these cases, the parties communicated through the mediator by means of a "shuttle" process. Interpreters were used 13 percent of the time by complainants and 5 percent of the time by respondents.

C) Prior Experience with Mediation at the OHRC and Elsewhere

Ninety-five percent of complainants reported the event as their first experience with mediation at the Commission and this compares with 89 percent for respondents. A few complainants reported having been a party before the Ontario Human Rights Commission on one or more previous occasions. Two complainants, or 3.6 percent, reported a single prior occasion, and 1 complainant, or 1.8 percent noted more than a single occasion. For respondents, single prior occasions represented 4.9 percent and multiple prior occasions represented 6.2 percent.

A majority of representatives had prior experience with mediation at the OHRC and elsewhere. Representative's surveys showed that 20 percent reported experience in over 10 mediations, 39 percent reported experience in 1-10 previous mediation sessions, and 41 percent reported no prior experience in mediation. Within this distribution, however, the greatest experience was found with the respondent representatives. Sixty-eight percent of complainant representatives had no previous experience in mediation compared with 22 percent in this category for respondent representatives.

D) Settlement Discussions and Settlement Rates

Over 60 percent of representatives for respondents recommended settlement to their clients before the mediation session convened. By contrast, this recommendation was made by complainant representatives in advance of the mediation session only 48 percent of the time. This difference is statistically significant[4]. In total, settlement discussions were conducted prior to mediation in approximately 22 percent of the cases.

Examination of the survey responses indicates that most cases ended in settlements either in whole or in part. In the combined survey results from complainants, respondents, third parties and representatives, a 72 percent settlement rate was found[5].

Evaluation of the OHRC Mediation Process

A) Preparedness for the Mediation

On 5-point Likert scales[6], the majority of survey respondents indicated that they understood what would be involved before attending the mediation session. Eighty-eight percent of respondent representatives indicated strong agreement or agreement with the statement: *"I understood what would be involved before attending the mediation session"*. However, this compares with only 64 percent of complainant representatives and this difference is statistically significant[7]. In assessing if there were differences in ratings between complainants and respondents it was noted that the differences were modest, and not statistically significant. (Sixty-four percent of complainants and 65 percent of respondents expressed strong agreement or agreement with this statement.)

Large majorities from all constituent groups strongly agreed or agreed that *"the mediation officer adequately explained his/her role"*, and that *"the mediation officer adequately explained the mediation process"*. Comparisons in responses reveal differences between the complainant (84%) and respondent (92%) groups as well as with complainant and respondent representatives (83% and 96% respectively). These differences have been noted by the Commission and will be assessed further with additional survey results for the period September 1998 to May 31, 1999. However, analysis of the data does not indicate a statistically significant difference at the present time.

Preparedness for Mediation:

| | Strongly agree | Agree | Neutral | Disagree | Strongly disagree |
|---|---|---|---|---|---|
| 1. I understood what would be involved before attending | 51% | 13% | 24% | 2% | 11% |
| • Complainants: | 53% | 12% | 24% | 4% | 7% |
| • Respondents: | | | | | |
| • Complainant Reps: | 49% | 15% | 9% | 18% | 9% |
| • Respondent Reps: | 79% | 9% | 2% | 4% | 6% |
| • Total | 58% | 13% | 16% | 5% | 8% |
| 1. The mediation officer adequately explained his/her role | 75% | | 4% | 0% | 13% |
| • Complainants: | 89% | 9% | 3% | 0% | 6% |
| • Respondents: | 68% | 3% | 3% | 6% | 9% |
| • Complainant Reps: | 79% | 15% | 2% | 2% | 0% |
| • Respondent Reps: | 80% | 17% | 3% | 1% | 7% |
| • Total | | 9% | | | |
| 1. The mediation officer adequately explained the mediation process | 76% | 7% | 2% | 0% | 15% |
| • Complainants: | 84% | 9% | 1% | 0% | 6% |
| • Respondents: | 63% | 13% | 5% | 11% | 8% |
| • Complainant Reps: | 75% | 21% | 2% | 2% | 0% |
| • Respondent Reps: | 77% | 12% | 2% | 2% | 7% |
| • Total | | | | | |

1. **Comprehensiveness of the Mediation Process**

Through the surveys, participants are asked whether the mediation process sufficiently dealt with the issues arising in the case. Although the scale scores are lower than those noted previously for preparedness, the survey results also indicate that parties generally perceived the process as comprehensive. Seventy percent of those surveyed agreed, with 46 percent

strongly agreeing that *"the issues in the case were sufficiently explored"*, and 53 percent agreed, with 30 percent strongly agreeing that *"the mediation process revealed facts which helped* them *move towards settlement"*. When the results are subdivided as in the chart below, we find evidence that representatives are much less inclined to agree that the mediation process uncovered facts that led the parties toward settlement.

Comprehensiveness of Process:

| | Valid % | | | | |
|---|---|---|---|---|---|
| | Strongly agree | Agree | Neutral | Disagree | Strongly disagree |
| 1. The issues in this case were sufficiently explored through the mediation process | 42% | 25% | 18% | 5% | 9% |
| • Complainants: | 56% | 23% | 14% | 4% | 4% |
| • Respondents: | 30% | 22% | 19% | 22% | 8% |
| • Complainant Reps: | 47% | 26% | 19% | 8% | 0% |
| • Respondent Reps: | 46% | 24% | 17% | 8% | 5% |
| • Total | | | | | |
| 1. The mediation process revealed facts and helped the parties move towards settlement | 46% | 20% | 11% | 9% | 15% |
| • Complainants: | 43% | 19% | 14% | 14% | 10% |
| • Respondents: | 20% | 17% | 34% | 20% | 9% |
| • Complainant Reps: | 14% | 31% | 39% | 8% | 8% |
| • Respondent Reps: | 30% | 23% | 27% | 11% | 9% |
| • Total | | | | | |

It is interesting to note that opinion in this regard generally divides based on the role one is playing in the process. A majority of complainants and respondents felt that the process drew out facts that led them toward settlement, but this was true for a smaller percentage of representatives.

C) Equality of Treatment

This portion of the survey was intended to elicit views on whether the process was fair, the mediator was neutral, and whether the parties felt their rights and concerns were addressed through the mediation process. The survey results show relatively high satisfaction scores on items measuring parties' perception of the fairness of the mediation process. Overall, 85 percent of those responding to the survey indicated (agreed or strongly agreed) that *"the mediation officer was fair and acted in a neutral manner"*. The satisfaction ratings of the participants for the fairness of the mediator stand out as the highest in this series of indicators. On the item measuring whether "*concerns were heard*", the combined total for *"agreement"* and *"strong agreement"* reached 74 percent. On whether *"rights were addressed through mediation"*, the combined score places the level of agreement at 69 percent. The scores were somewhat lower for the item that asked the parties to rate the sincerity of the effort given by the *other* party. On this measure, opinion divided sharply. Respondent parties were less inclined to agree that complainants had provided their full co-operation. Forty-three percent of respondents and 45 percent of respondent representatives agreed or strongly agreed, compared with 60 percent of complainants and 66 percent of complainant representatives. It is important to note that through a formal analysis of this data, the difference in responses between respondent and complainant groups is not statistically significant.

In measuring whether the party "*felt like an equal participant in the mediation meeting*", complainants and respondents provided similar replies. For complainants, the combined total for agree and strongly agree was 74 percent. Respondents strongly agreed or agreed with this statement 81 percent of the time.

Equality of Treatment:

| | Valid % | | | | |
|---|---|---|---|---|---|
| | Strongly agree | Agree | Neutral | Disagree | Strongly disagree |
| 1. The mediation officer was fair and acted in a neutral manner | 75% | 9% | 0% | 5% | 11% |
| • Complainants: | 74% | 19% | 1% | 2% | 4% |
| • Respondents: | 54% | 16% | 14% | 5% | 11% |
| • Complainant Reps: | 68% | 19% | 8% | 4% | 2% |
| • Respondent Reps: | 69% | 16% | 4% | 4% | 6% |
| • Total | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| 1. I felt my concerns/ my client's concerns were heard | 47% | 25% | 15% | 2% | 11% |
| • Complainants: | 57% | 22% | 15% | 2% | 4% |
| • Respondents: | 42% | 25% | 8% | 11% | 14% |
| • Complainant Reps: | 47% | 25% | 19% | 9% | 0% |
| • Respondent Reps: | 50% | 24% | 15% | 5% | 6% |
| • Total | | | | | |
| 1. My rights/ my client's rights were addressed through mediation | 49% | 18% | 20% | 5% | 7% |
| • Complainants: | 56% | 21% | 14% | 4% | 5% |
| • Respondents: | 31% | 26% | 20% | 11% | 11% |
| • Complainant Reps: | 31% | 38% | 25% | 6% | 0% |
| • Respondent Reps: | 44% | 25% | 19% | 6% | 6% |
| • Total | | | | | |
| 1. The other party was attempting to resolve our differences in mediation | 42% | 18% | 15% | 11% | 15% |
| • Complainants: | 22% | 21% | 25% | 14% | 18% |
| • Respondents: | 29% | 37% | 3% | 18% | 13% |
| • Complainant Reps: | 26% | 19% | 23% | 19% | 13% |
| • Respondent Reps: | 29% | 22% | 18% | 15% | 15% |
| • Total | | | | | |
| 1. I felt like an equal participant in the mediation meeting | | | | | |
| • Complainants: | 54% | 20% | 13% | 7% | 6% |
| • Respondents: | 60% | 21% | 9% | 6% | 4% |
| • Total | 57% | 21% | 10% | 7% | 4% |

In dealing with the issue of fairness, it is important to note that only 16 percent of those surveyed felt that there was pressure to settle the case. Half of those who indicated that pressure was a factor also indicated that the pressure was from a source other than the mediator.

Did You Feel Pressured to Settle?

| | Valid % | | |
|---|---|---|---|
| | Yes | Undecided | No |
| 1. Did you feel pressured to settle? | | | |
| • Complainants: | 22% | | |
| • Respondents: | 11% | 7% | 71% |
| • Total | 16% | 16% | 73% |
| | | 13% | 72% |

D) Satisfaction With Process and Outcome

When presented with the question: "*Would you choose mediation if you were involved in a future case at the Ontario Human Rights Commission?*", a strong majority replied in the affirmative. Among all parties surveyed, 87 percent indicated that they would choose mediation again. Approximately 9 percent were undecided and a very small portion (4%) noted they would not opt for mediation in the future. When examined by participant type (i.e. complainant, respondent), these percentages displayed only a slight degree of variation.

Would you Choose Mediation if given another opportunity at OHRC?

| | Valid % | | |
|---|---|---|---|
| | Yes | Undecided | No |
| 1. Would you choose mediation if you were involved in a future case with the Commission? | | | |
| • Complainants: | 85% | 11% | |
| • Respondents: | 86% | 10% | 4% |
| • Complainant Reps: | 83% | 8% | 4% |
| • Respondent Reps: | 92% | 6% | 8% |
| • Total | 87% | 9% | 2% |
| | | | 4% |

The overall response to the survey indicates general satisfaction and that most parties felt satisfied both with the process and with its outcome. Seventy-four percent of the parties agreed or strongly agreed with the statement: *"Overall I was satisfied with the process of mediation"*. The rating for those cases that resulted in a settlement was slightly higher at 79 percent.

General Satisfaction

With Mediation Process

XIII. Valid %

| | Strongly agree | Agree | Neutral | Disagree | Strongly disagree |
|---|---|---|---|---|---|
| **All Cases** | | | | | |
| **Overall I was satisfied with the process of mediation** | | | | | |
| • Complainants: | 44% | 25% | 16% | 7% | 7% |
| • Respondents: | | | | | |
| • Complainant Reps: | 67% | 15% | 12% | 4% | 2% |
| • Respondent Reps: | 30% | 27% | 19% | 11% | 14% |
| • Total | 40% | 38% | 23% | 0% | 0% |
| | 49% | 25% | 17% | 5% | 5% |
| **Settlements Only** | | | | | |
| **Overall I was satisfied with the process of mediation** | | | | | |
| • Complainants: | | 24% | 18% | 3% | 3% |
| • Respondents: | | | | | |
| • Complainant Reps: | 53% | 14% | 7% | 2% | 3% |
| • Respondent Reps: | 74% | 30% | 9% | 9% | 9% |
| • Total | 44% | 36% | 30% | 0% | 0% |
| | 33% | 24% | 15% | 3% | 3% |
| | 55% | | | | |

With regard to satisfaction ratings on the mediation outcome only, 63 percent indicated overall satisfaction. The rating on satisfaction with outcome was considerably higher in cases that settled, with 74 percent indicating overall agreement.

General Satisfaction

With Mediation Outcome

XIV.

| | Valid % | | | | |
|---|---|---|---|---|---|
| | Strongly agree | Agree | Neutral | Disagree | Strongly disagree |
| All Cases | | | | | |
| Overall I was satisfied with the outcome of the mediation | | | | | |
| • Complainants: | 44% | 15% | 24% | 6% | 11% |
| • Respondents: | | | | | |
| • Complainant Reps: | 42% | 20% | 20% | 8% | 10% |
| • | | | | | |
| • Respondent Reps: | 34% | 26% | 11% | 11% | 18% |
| • Total | | | | | |
| | 31% | 37% | 19% | 8% | 6% |
| | 39% | 24% | 19% | 8% | 11% |
| Settlements Only | | | | | |
| Overall I was satisfied with the outcome of the mediation | | | | | |
| • Complainants: | | 19% | 24% | 3% | 3% |
| • Respondents: | | | | | |
| • Complainant Reps: | 51% | 25% | 18% | 7% | 5% |
| • | | | | | |
| • Respondent Reps: | 46% | 30% | 4% | 4% | 13% |
| • Total | | | | | |
| | 48% | 46% | 9% | 9% | 0% |
| | 36% | 29% | 15% | 6% | 5% |
| | 45% | | | | |

Statistical tests reveal that satisfaction scores were significantly higher among participants whose cases settled at mediation. This effect was true for satisfaction regarding the mediation *outcome* in the complainant and respondent survey sample as well as in the representative survey sample[8]. For *process* satisfaction, the effect was noted only in the sample for

complainants and respondents[9]. Further testing within the complainant and respondent survey sample revealed that respondent parties had significantly higher *process* satisfaction scores[10].

E) Suggestions for Improvement

In the surveys, participants are asked what would have made the mediation experience more positive and they are provided with a list of items to choose from. From the list of items presented as suggestions for improvement, the following two were most commonly selected:

- More information on the facts
- More information on the law

These items were selected approximately 21 percent of the time. The remaining items were selected less often. Approximately 4 percent of the surveyed parties indicated that mediators should have participated more, and roughly this same portion indicated that mediators should have participated less.

| | Complainants, respondents and 3rd parties | Lawyers and representatives 4.4% |
|---|---|---|
| 1. mediator should have participated more | 3.5% | |
| b) mediator should have participated less | 2.8% | 6.6% |
| c) there should have been more private meetings | 4.9% | 4.4% |
| d) there should have been fewer private meetings | 3.5% | 2.2% |
| e) more information on the facts | 20.1% | 23.1% |
| f) more information on the law | 18.8% | 18.7% |
| g) more information about the mediation process | 4.9% | 2.2% |

Approximately 4 percent felt that there should have been more private meetings, compared

with approximately 3 percent who felt that there should have been fewer private sessions. A small percentage (approximately 4%) felt that more information about the mediation process should have been provided.

F) Factors Associated With Settlement at Mediation

Within the survey sample for lawyers and representatives, settlement at mediation was significantly associated with a greater tendency to feel that the mediators were fair and neutral[11] and with a greater tendency to feel that the other party tried to resolve the matter[12]. Within the survey sample for complainants, respondents and third parties, settlement at mediation was significantly associated with a greater tendency to feel that their concerns were heard[13] and once again, with a greater tendency to feel that the other party tried to resolve the matter[14].

G) The Issue of "Public Interest"

The last item on the surveys (excluding the mediator's survey) involves the Commission's public interest mandate, and presents the question of whether the participant felt that the public interest was served in the particular case:

The Human Rights *Code* sets out a public interest mandate. This means that the Ontario Human Rights Commission must ensure that the public interest in each case is met either through resolving the individual's issue or ensuring discrimination does not occur in the future. Do you feel that the public interest arising in this case was served through the mediation process?

Approximately two thirds of the parties indicated that, in their opinion, the public interest had been served. When broken down by party type and by settlement outcome, the results are as follows:

Was the Public Interest Served

XV.

| | | Valid % | | |
|---|---|---|---|---|
| All Cases | | Yes | Undecided | No |
| | Do you feel that the public interest arising in this case was served through the mediation process? | | | |
| | • Complainants: | 61% | 24% | 15% |
| | • Respondents: | 65% | 16% | 19% |
| | • Complainant Reps: | 66% | 22% | 13% |
| | • Respondent Reps: | 57% | 29% | 14% |
| | • Total | 62% | 22% | 16% |
| Settlements Only | | | | |
| | Do you feel that the public interest arising in this case was served through the mediation process? | | | |
| | • Complainants: | 67% | 27% | 5% |
| | • Respondents: | 62% | 19% | 19% |
| | • Complainant Reps: | 76% | 24% | 0% |
| | • Respondent Reps: | 63% | 19% | 19% |
| | • Total | 66% | 22% | 12% |

A fairly large number of people were unsure (approximately 22%) and the remainder felt that the public interest had not been served (12% of cases where settlements resulted and 16% overall).

1. **Additional Comments Offered by Participants in the Mediation Process**
2. In addition to the structured replies, the questionnaires also provided opportunities for the participants to comment freely on any other aspects of the process. The responses to these open-ended questions provide valuable qualitative insights into parties' perceptions of the Commission mediation services.

   For the most part, the comments in reply to the open-ended questions were supportive and appreciative. In a large number of instances, the participants used the opportunity to thank the Commission, and in particular, to thank the mediators for the role they played. The following is one comment that typifies this sentiment:

   The (named mediator) knew her job well, was professional and was an asset to the organization. Thanks for the time.

   A complainant's representative, commenting in a case that settled.

   There were a few instances, however, where the comments indicated an underlying tone of dissatisfaction, and these tended to be in instances where the mediators found a need to employ power balancing techniques or a need to remind the parties of their obligation to protect the overall public interest. For example:

   The mediator should not attempt to advocate for the other side…The mediator had no business trying to insert a global term of settlement that she wanted because she thought the Commissioners would want it. The complainant was not interested in this term.

   A respondent's lawyer, commenting in a case that settled.

   A brief sampling of the remaining replies is provided below:

   I didn't think mediation would be successful, but it was. The mediator was very good. The parties have to continue their relationship in the future, so this is an important outcome.

   A respondent's lawyer, commenting in a case that settled.

   I felt I was at least being listened to by "someone" and that person, while not siding with me did at least enable me to feel that what happened is being taken seriously. We did not reach settlement and no closure was achieved but the process allowed me to hold my head up and it encouraged me to seek settlement at a higher level.

   A complainant commenting in a case that did not settle.

   In this case the complainant had a very specific resolution in mind which the employer could not meet. The failure to settle was not a reflection of the process or the mediator. Thanks for the effort.

   A respondent's representative, commenting in a case that did not settle.

   I was very impressed with the mediator. He had a very empathetic and yet structured approach to the day and he was effective in moving these polarized parties closer together. He was very sensitive when my client became distraught and tearful. He was excellent at giving both parties a lot of options so that it felt like "our deal", while he remained neutral. This was a very positive experience.

A complainant's lawyer, commenting in a case that settled.

3. **The Mediators' Perspectives**

One of the critical success factors for mediators is their ability to recognize and deal with power imbalances between the parties at mediation. Situations involving power imbalances arose less than one third of the time, according to the mediators (29%), and when they did, the mediators generally addressed them by separating the parties and caucusing between them during critical stages of the process. A second critical issue for mediators is their ability to keep parties mindful of their requirement to fulfil the public interest mandate. Mediators reminded the parties of this requirement nearly half of the time (47%).

These two issues are of major importance in the assessment of the mediation service, and particularly so in the context of evaluating satisfaction with the service delivery. It is clear that for a number of participants – and particularly respondent parties – the mediators' responses in these situations were at times unwelcome, and were sometimes perceived as inappropriate. More common, however, were comments that emphasized the professional aspect that the mediators brought to the sessions. On several occasions, parties provided comments that indicated profound respect for the objectivity and neutrality of the mediators.

The mediators provided similar responses to those given by parties and respondents on the issue of the parties' readiness to participate in the mediation. Mediators agreed or strongly agreed that the parties understood the process 87 percent of the time, and they agreed or strongly agreed that their role was understood by the parties 90 percent of the time. Not surprisingly, in virtually every instance, mediators strongly agreed that they had been fair and neutral in their mediation processes. Mediators strongly agreed with this statement 97 percent of the time, and this compared with an overall strong agreement rating of 69 percent for complainants, respondents and representatives.

On the measures relating to the comprehensiveness of the process, the perceptions of the mediators were somewhat higher than the other surveyed parties on issues being sufficiently explored through mediation. Mediators agreed or strongly agreed that the issues were sufficiently explored 87 percent of the time. Mediators combined agreement scores (59%) on the item measuring whether facts were revealed that led parties toward settlement, were generally consistent with the agreement scores provided by the other parties (53%).

Mediators agreed or strongly agreed that both sides made serious efforts to resolve their differences in 60 percent of the cases, and these percentages were slightly higher than percentages apparent from the other surveyed groups (51%).

Mediators were satisfied with the process 77 percent of the time (32% of the time they agreed with the statement and 45% of the time they strongly agreed), compared with an overall rating of 74 percent from other surveyed parties. Mediators were satisfied with the outcome 74 percent of the time (16% of the time they agreed with the statement and 58% of the time they strongly agreed), which is considerably higher than the 63 percent rating of other surveyed parties.

## Discussion and Recommendations for Future Research

This study fulfilled its primary objective, which was to determine the levels of participant satisfaction with the mediation process. The results indicate that participants are indeed quite

satisfied with the Commission's mediation service. Seventy-four percent of participants reported overall satisfaction with the process (i.e. 74% agreed or strongly agreed with the statement: *"Overall I was satisfied with the process of mediation"*) and 63 percent of participants reported overall satisfaction with the mediation outcome (i.e. 63% agreed or strongly agreed with the statement: *"Overall I was satisfied with the outcome of the mediation"*). A strong majority (87%) reported an inclination to choose mediation again should circumstances bring them to the Human Rights Commission in the future.

The items measuring satisfaction with specific aspects of the process also generated positive responses:

- 89 percent indicated that the process and the officer's role within it were adequately explained (i.e. agreed or strongly agreed with the corresponding attitude measurement items); and,

- 70 percent indicated that the issues were sufficiently explored (i.e. agreed or strongly agreed with the corresponding attitude measurement item).

Perhaps most importantly, the study found high satisfaction scores on the items measuring the perceived fairness of the process. When this question was put directly to the complainants and respondents, 78 percent felt or felt strongly that they had been treated as equal participants. In addition:

- 85 percent indicated that the mediation officer was fair and acted in a neutral manner (i.e. agreed or strongly agreed with the corresponding attitude measurement item);

- 74 percent indicated that their concerns were heard (i.e. agreed or strongly agreed with the corresponding attitude measurement item); and,

- 69 percent indicated that their rights (or their client's rights) were addressed through the mediation process (i.e. agreed or strongly agreed with the corresponding attitude measurement item).

The highest satisfaction scores were registered on the items measuring the direct actions of the mediators:

- 89 percent of participants agreed or strongly agreed that the mediation officer adequately explained his/her role;

- 89 percent of participants agreed or strongly agreed that the mediation officer adequately explained the process; and,

- 85 percent of participants agreed or strongly agreed that the mediator was fair and acted in a neutral manner.

By contrast, the lowest score was registered on the item that measured the actions of the other party in the dispute:

- 51 percent of participants agreed or strongly agreed that the other party was sincere in its effort to resolve the differences.

As we go beyond the primary objectives of the study and examine the findings at more detailed levels, we discover a number of interesting differences between the respective constituent groups, and we arrive at a number of questions for future research.

It is important to note that respondents and complainants have markedly different representation profiles. Respondents are far more likely to bring lawyers with them into their mediation processes, and the lawyers they bring tend to be more experienced than lawyers who come representing complainants. These differences likely help to explain why respondent representatives are more inclined to indicate they understood what would be involved before attending the mediation session.

Complainant parties and respondent parties also differ significantly in terms of their general satisfaction with the mediation process. It remains for future research to determine whether this is driven in part by the differences in representation – compared with 78 percent of respondent representatives, only 57 percent of complainant representatives were satisfied or very satisfied with the mediation process.

The research also suggests that the parties differ in terms of their motivations toward settlement. Over 60 percent of respondent representatives recommended settlement before the mediation session convened and this compares with only 48 percent of complainant representatives. Furthermore, the scores on the item regarding the sincerity of the effort by the other side support the notion that respondents may indeed have a greater interest in achieving settlement. Having identified the difference between the groups, it now remains for future research to isolate the salient characteristics that influence the motivations toward settlement.

The survey data corresponds with the information as summarized in the Commission's Case Management Database system regarding overall rates of settlement. According to both sources, the Commission's mediation settlement rate remained relatively high at 72 percent. These research findings indicate a strong positive correlation between settlement and satisfaction scores, and it goes to reason therefore that if the Commission's settlement rate were to drop, satisfaction would also decrease proportionally.

Within the Commission, this research study will form the basis for structured, ongoing monitoring and evaluation and the results will provide a forum for discussion regarding further service improvements. Within the public agency sector, the report will be useful for other institutions that may have an interest in conducting similar mediation services evaluations, and within the broader research community, the report presents a number of interesting questions that can be examined in greater depth in future research endeavours.

Endnotes

1. For the full year ending 31-March-99, the Commission conducted a total of 575 mediations.
2. The survey returns are consistent with the Commission's overall case profiles which indicate that:

- The largest number of cases originate in the Toronto region, the next most common region is the South-western region, the Eastern region ranks third, and the Northern region ranks fourth.
- Handicap, race and colour are the most frequently cited grounds.
- Employment is by far the most frequently cited social area.

1. The difference in representation between complainants and respondents was statistically significant ($\chi^2 = 27.86$; $df = 3$; $p = 0.0000$).
2. Complainant representatives recommended settlement in advance of the mediation session only 48% of the time compared with 60% for respondent representatives ($\chi^2 = 8.84$; $df = 1$; $p = 0.0029$).
3. One hundred and sixty survey respondents followed the questionnaire "skip pattern" that was associated with the settlement outcome. Sixty-one followed the skip pattern" that indicated a failure to settle, and nineteen questionnaire returns were inconclusive because they contained answers to questions pertaining to *both* outcomes. The survey returns therefore indicate a 72% settlement rate, and this figure is consistent with the 72% settlement rate that applied to the full set of cases that were mediated in this time interval.
4. In a widely-circulated text, Earl Babbie provides the following definition of a Likert scale:
5. A type of composite measure developed by Rensis Likert in an attempt to improve the levels of measurement in social research through the use of standardized response categories in survey questionnaires. Likert-items are those utilizing such response categories as strongly agree, agree, disagree, and strongly disagree. *(Babbie, Earl R., The Practice of Social Research, Second Edition, Wadsworth Publishing Company, Inc., Belmont, California, p. 580)*
6. While respondent representatives scored highest on this satisfaction item, complainant representatives scored lowest, and the difference was statistically significant ($\chi^2 = 11.08$; $df = 4$; $p = 0.0256$).
7. Outcome satisfaction scores were significantly higher in cases that settled at mediation. For complainants, respondents and third parties, the statistical test for *outcome* satisfaction revealed $\chi^2 = 20.99$; $df = 4$; $p = 0.0003$, and for lawyers and representatives, the test for *outcome* satisfaction revealed $\chi^2 = 26.15$; $df = 4$; $p = 0.0000$.
8. Process satisfaction scores for complainants, respondents and third parties were significantly higher in cases that settled at mediation. The statistical test for *process* satisfaction revealed $\chi^2 = 16.83$; $df = 4$; $p = 0.0021$.
9. Process satisfaction scores were significantly higher for respondents. The statistical test revealed $\chi^2 = 18.27$; $df = 8$; $p = 0.0193$.
10. Lawyers and representatives provided significantly higher mediator fairness/neutrality scores when their cases settled at mediation. The statistical test revealed $\chi^2 = 9.93$; $df = 4$; $p = 0.0416$.
11. When their cases settled, lawyers and representatives were significantly more likely to agree that the other side tried to resolve the matter. The statistical test revealed $\chi^2 = 26.29$; $df = 4$; $p = 0.0000$.
12. When their cases settled, complainants, respondents and third parties were significantly more likely to feel that their concerns were heard. The statistical test revealed $\chi^2 = 12.84$; $df = 4$ $p = 0.0121$.
13. When their cases settled, complainants, respondents and third parties were significantly more likely to feel that the other side was cooperative. The statistical test revealed $\chi^2 = 14.44$; $df = 4$ $p = 0.0060$.

Appendix 1A:

Ontario Human Rights Commission

Mediation Services

Complainant/Respondent Questionnaire

Thank you for your participation in the Ontario Human Rights Commission's Mediation Services. We would appreciate a few minutes of your time in completing this questionnaire in order to help us assess and improve the mediation services of the Commission. Responses will be used in a statistical evaluation and will remain anonymous. If at any time there is not sufficient space to complete any response, please feel free to continue on the back of the page or on a separate sheet of paper.

Date of Mediation: _____

Region: _____

Part I: General Information

1. Grounds of alleged discrimination
- sex
- handicap
- race/place of origin
- colour
- sexual harassment
- age
- marital status
- family status
- sexual orientation
- ancestry
- ethnic origin
- citizenship
- creed
- record of offences
- breach of settlement
- receipt of social assistance
- other

1. Social Area of Alleged Discrimination
- employment
- accommodation
- services, goods & facilities
- associations or unions
- contracts

1. In this matter you are:
- a complainant
- a respondent
- third party/other

1. In this matter I was represented by:
- my lawyer

- family member or friend
- another person
- my union
- I represented myself

1. Was your mediation conducted:

- in person
- by telephone

1. Did you use an interpreter in the mediation?

- Yes
- No

1. How many mediations have you previously participated in at OHRC or anywhere else?

- none
- one
- more than one

1. How many times have you previously been a party before the Ontario Human Rights Commission?

- never
- once
- more than once

Part II: The Mediation Session

1.
2. Please answer the following questions about the mediation by circling one of the numbers, where 1 is strongly agree and 5 is strongly disagree:
3. I understood what would 1 2 3 4 5

be involved in the mediation

before attending.

The mediation officer 1 2 3 4 5

adequately explained his/her role.

The mediation officer 1 2 3 4 5

adequately explained the

mediation process

4. Please answer the following questions relating to the mediation session by circling one of the numbers, *where 1 is strongly agree and 5 is strongly disagree:*
5. The mediation officer was fair and 1 2 3 4 5

   acted in a neutral manner.

   The issues in this case were 1 2 3 4 5

   sufficiently explored through

   the mediation process.

   I felt that my concerns were heard. 1 2 3 4 5

   The mediation process revealed 1 2 3 4 5

   facts which helped me

   move towards settlement.

   My rights were addressed through 1 2 3 4 5

   the mediation.

   Overall I was satisfied with the process 1 2 3 4 5

   of mediation.

   I believe that the mediation process 1 2 3 4 5

   revealed facts which helped the parties

   move towards settlement.

   The other party was 1 2 3 4 5

   attempting to resolve our

   differences in mediation.

   I felt like an equal participant in 1 2 3 4 5

   the mediation meeting.

   I was satisfied with the outcome 1 2 3 4 5

   of the mediation.

6. Would you choose Mediation if you were involved in a future case with the Commission?

• yes • no • undecided

1. What would have made your mediation experience better?
   - o mediator should have participated more
   - o mediator should have participated less
   - o there should have been more private meetings
   - o there should have been fewer private meetings
   - o more information on the facts
   - o more information on the law
   - o more information about the mediation process
   - o other (please specify):

_____

1. Did you feel pressured to settle?

• yes • no • undecided

If yes, where did these pressures originate?

- o the mediator
- o the other party
- o my lawyer/representative
- o other (please specify):

_____

If the mediation did not result in a full or partial settlement, please proceed to Question #15.

1. If the mediation resulted in full or partial settlement, please answer the following questions, by circling one of the numbers, *where #1 is strongly agree and #5 is strongly disagree.*
2. I was satisfied with the 1 2 3 4 5

   settlement reached.

   I gained a better understanding 1 2 3 4 5

   of the other party's point of view

   I did not like that the terms of 1 2 3 4 5

settlement required Commission

approval.

Mediation was a good approach 1 2 3 4 5

in dealing with this case.

Go To Question #17

3. If the mediation did not result in full or partial settlement, please answer the following questions by circling the appropriate number, *where #1 is strongly agree and #5 is strongly disagree.*
4. Even though the mediation did not 1 2 3 4 5

result in settlement, I gained a better

understanding of the other party's

point of view.

Mediation was a good approach 1 2 3 4 5

in dealing with this case.

The requirement to have the 1 2 3 4 5

Commission approval affected the

parties' willingness to settle.

Even though mediation did not result 1 2 3 4 5

in a settlement, I feel that as a result

of it, my relationship with the other

party has improved.

The mediation process provided a 1 2 3 4 5

good settlement opportunity.

5. Which of the following reasons played an important role in a settlement not being reached:

- o hostility between the parties
- o not enough time
- o disagreement as to the facts
- o disagreement as to the law
- o mediator could have been more helpful
- o other side uncooperative
- o lack of information
- o other (please specify):

---

1. Was there anything that could have been done differently which would have helped the parties to reach a settlement?

• yes • no • unsure

If yes, Please explain:

---

1. The Human Rights Code sets out a public interest mandate. This means that the Ontario Human Rights Commission must ensure that the public interest in each case is met either through resolving the individual's issue or ensuring discrimination does not occur in the future. Do you feel that the public interest arising in this case was served through the mediation process?

• Yes • No • Unsure

We would like to thank you for taking the time to complete the questionnaire. It will help us in our ongoing evaluation of the Mediation Services of the Ontario Human Rights Commission.

If you have any further comments, please set them out below:

---

Appendix 1B:

Ontario Human Rights Commission

Mediation Services

Lawyer/Representative Questionnaire

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Thank you for your participation in the Ontario Human Rights Commission's Mediation Services. We would appreciate a few minutes of your time in completing this questionnaire in order to help us assess and improve the mediation services of the Commission. Responses will be used in a statistical evaluation and will remain anonymous. If at any time there is not sufficient space to complete any response, please feel free to continue on the back of the page or on a separate sheet of paper.

Date of Mediation: _____

Region: _____

Part I: General Information

1. Grounds of alleged discrimination

- o sex
- o handicap
- o race/place of origin
- o colour
- o sexual harassment
- o age
- o marital status
- o family status
- o sexual orientation
- o receipt of public assistance
- o ancestry
- o breach of settlement
- o record of offences
- o citizenship
- o creed
- o ethnic origin
- o other

1. Social Area of Alleged Discrimination

- o employment
- o accommodation
- o services, goods & facilities
- o associations or unions
- o contracts

1. In this matter you are:

- o solicitor for the Complainant
- o solicitor for the Respondent
- o non-lawyer representative (Complainant)
- o non-lawyer representative (Respondent)
- o union representative

4. If you are a lawyer, how many years have you been practising:

- o 0 –2 Years
- o 2 – 5 Years

- 5 – 10 Years
- 10 – 20 Years
- 20 + Years

5. How was your mediation conducted?

- in person
- by telephone

6. How many times in the last 5 years have you represented a party to a human rights complaint?

- 1 – 5 Times
- 6 –20 Times
- 21 – 50 Times
- 50 + times

1. Were there any settlement discussions with the other side prior to mediation?

- yes
- no

1. Did you recommend settlement of this matter to your client prior to the mediation session?

- yes
- no

9. **How many mediations have you previously participated in at the Ontario Human Rights Commission or elsewhere:**

- none
- one
- 1 – 3
- 4 – 10
- 10 +

Part II: The Mediation Session

10. Please answer the following questions about the mediation, *where 1 is strongly agree and 5 is strongly disagree:*

I understood what would 1 2 3 4 5

be involved in the mediation

before attending.

The mediation officer 1 2 3 4 5

adequately explained his/her role.

The mediation officer 1 2 3 4 5

adequately explained the

mediation process.

11. Please answer the following questions relating to the mediation session, *where 1 is strongly agree and 5 is strongly disagree:*

The issues in this case were 1 2 3 4 5

sufficiently explored through the

mediation process.

I felt that my clients concerns were 1 2 3 4 5

heard.

The mediation officer acted in 1 2 3 4 5

a neutral manner.

The mediation process revealed facts 1 2 3 4 5

which helped the parties move towards

settlement.

My client's rights were 1 2 3 4 5

addressed through the mediation.

Overall I was satisfied with 1 2 3 4 5

the mediation process.

The other party was attempting 1 2 3 4 5

to come to a resolution through

mediation.

I was satisfied with the outcome 1 2 3 4 5

of the mediation.

1.
2. Would you choose Mediation if you were involved in a future case with the Commission?

• yes • no • undecided

1. What would have made your mediation experience better?
   - mediator should have participated more
   - mediator should have participated less
   - there should have been more private meetings
   - there should have been fewer private meetings
   - more information on the facts
   - more information on the law
   - more information about the mediation process
   - other (please specify):

---

IF THE MEDIATION DID RESULT IN A FULL OR PARTIAL SETTLEMENT, PLEASE PROCEED TO QUESTION #17.

14. If the mediation did not result in full or partial settlement, please answer the following questions, *where #1 is strongly agree and #5 is strongly disagree.*

Even though the mediation did not 1 2 3 4 5

result in settlement, my client

gained a better understanding

of the other party's point of view.

Mediation was a good approach 1 2 3 4 5

in dealing with this case.

The requirement to have the 1 2 3 4 5

Commission approve the settlement

hampered the parties in reaching agreement.

Even though mediation did not result 1 2 3 4 5

in a settlement, I feel that as a result

of it, my client's relationship with

the other party has improved.

The mediation process provided a 1 2 3 4 5

good settlement opportunity.

15. Which of the following reasons played an important role in a settlement not being reached:

- hostility between the parties
- not enough time
- disagreement as to the facts
- disagreement as to the law
- mediator could have been more helpful
- other side uncooperative
- lack of information
- other (please specify):_____

16. Was there anything that could have been done differently which would have helped settlement to be reached?

• yes • no • unsure

If yes, please explain:

GO TO QUESTION #18.

17. If the mediation resulted in full or partial settlement, please answer the following questions, where #1 is strongly agree and #5 is strongly disagree.

I was satisfied with the settlement 1 2 3 4 5

reached, given the circumstances

of the case.

My client gained a better 1 2 3 4 5

understanding of the other party's

point of view.

The requirement to have Commission 1 2 3 4 5

approval of the settlement

affected the outcome.

Mediation was a good approach 1 2 3 4 5

in dealing with this case.

18. The Human Rights Code sets out a public interest mandate. This means that the Ontario Human Rights Commission must ensure that the public interest in each case is met either through resolving the individual's issue or ensuring discrimination does not occur in the future. Do you feel that the public interest arising in this case was served through the mediation process?

- yes
- no
- unsure

We would like to thank you for taking the time to complete the questionnaire. It will help us in our ongoing evaluation of the Mediation Services of the Ontario Human Rights Commission.

If you have any further comments, please set them out below:

---

Appendix 1C:

Ontario Human Rights Commission

Mediation Services

Mediator Questionnaire

---

Date of Mediation: _____

Region: _____

Part I: General Information

1. Grounds of alleged discrimination

- o sex
- o handicap

- ancestry
- race/place of origin
- ethnic origin
- citizenship
- colour
- creed
- sexual harassment
- age
- marital status
- family status
- sexual orientation
- receipt of public assistance
- breach of settlement
- record of offences
- other

2. Social Area of Alleged Discrimination

- employment
- accommodation
- services, goods & facilities
- associations or unions
- contracts

3. In this matter the complainant was represented by:

- lawyer
- family member or friend
- another person
- his/her union
- represented him/herself

1. In this matter the respondent was represented by:

- lawyer
- family member or friend
- another person
- represented him/herself

1. The respondent can best be described as:

- an individual
- a small business
- a medium size business
- a large corporation
- a government Ministry/agency

1. How many mediations have you conducted?

No. _____

Part II: The Mediation Session

- The mediation was conducted:

- In person
- by telephone

1. Please answer the following questions about the mediation, *where 1 is strongly agree and 5 is strongly disagree:*

The complainant appeared 1 2 3 4 5

well prepared for the mediation.

The respondent appeared 1 2 3 4 5

well prepared for the mediation.

The parties adequately understood 1 2 3 4 5

the mediation process.

The parties adequately understood 1 2 3 4 5

my role.

- Please answer the following questions relating to the mediation session, where 1 is strongly agree and 5 is strongly disagree:
- I felt the issues in this case were 1 2 3 4 5
- sufficiently explored through the
- mediation process.
- I felt that all parties' concerns were 1 2 3 4 5
- heard.
- The mediation process revealed facts 1 2 3 4 5
- which helped the parties move towards
- settlement.
- Overall I was satisfied with 1 2 3 4 5
- the mediation process for this case.
- Both parties were attempting 1 2 3 4 5
- to come to a resolution through
- mediation.
- I was satisfied with the outcome 1 2 3 4 5
- of the mediation.
- I was able to act in 1 2 3 4 5
- a neutral manner
- If you found it difficult to remain neutral, please explain why:
-
-

- Were there power imbalances between the parties which had to be addressed during the mediation?

• yes • no

Please explain and set out below how these imbalances were addressed:

1. I had to remind the parties of the public interest mandate of the OHRC during the mediation.

• yes • no

IF THE MEDIATION DID NOT RESULT IN A FULL OR PARTIAL SETTLEMENT, PLEASE PROCEED TO QUESTION NO. 13.

1. If the mediation did result in full or partial settlement, please answer the following questions where 1 is strongly agree and 5 is strongly disagree.

The settlement reached was 1 2 3 4 5

reasonable given the circumstances

of the case.

The parties appeared to gain a 1 2 3 4 5

better understanding of each other's

point of view.

The terms of settlement would have 1 2 3 4 5
been different if they did not require
further approval by the Commission.
The parties appeared to be satisfied 1 2 3 4 5
with the outcome of mediation.
The public interest mandate of the 1 2 3 4 5
Commission was fulfilled in the
settlement.

GO TO QUESTION #15.

- If the mediation did not result in full or partial settlement, please answer the following questions where #1 is strongly agree and #5 is strongly disagree:

Even though mediation did not result 1 2 3 4 5
in a settlement, the parties gained a
better understanding of each other's
point of view.
Mediation was a good approach in 1 2 3 4 5
dealing with this case.
Settlement could have been reached 1 2 3 4 5
if it did not require further approval
by the Commission.
Even though the mediation did 1 2 3 4 5

not result in settlement, the

relationship between the parties

appears to have improved as a result

of it.

The mediation process provided 1 2 3 4 5

a good settlement opportunity.

- Which of the following reasons played an important role in a settlement not being reached?
- hostility between the parties
- not enough time
- disagreement as to the facts
- disagreement as to the law
- my role as a mediator
- other side uncooperative
- lack of information
- other (please specify):

_____

1. In retrospect, I would have done the following things in a different manner:

_____

If you have any further comments, please set them out below:

_____